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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,949	03/07/2002	Rainer Tilse	4597-039	2820
EXAMINER				
WILSON, JOHN J				
ART UNIT		PAPER NUMBER		
3732				

DATE MAILED: 10/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/069,949

Applicant(s)

TILSE, RAINER

Examiner

John J. Wilson

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 3-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14-16 is/are allowed.
- 6) ☒ Claim(s) 3-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 8/31/04
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 3, line 5, "a nozzle" is confusing as to whether it is the same "a nozzle" in line 3 or not.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 3, 4, 11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (3792530). Smith shows a hand held device 1, nozzle 5, means for conveying 6, handle as shown and a generator 8, which can be a sound generator, column 8, lines 5-7. The generator will inherently vibrate the nozzle. That the generator can oscillate while filling, see column 6, lines 30-44. All of the claimed structure being shown, the use with a synthetic resin is given no patentable weight.

*Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 4, 9, and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hirdes (4768955). Hirdes shows a supply container 5, nozzle 10, 11, means for conveying 3, handle 2 and ultra sound generator 50, column 4, lines 60-67. The oscillator 50 will inherently set the nozzle into oscillation. All of the claimed structure being shown, to use with for filling a synthetic resin is an obvious matter of intended use of a known structure to one of ordinary skill in the art. All of the claimed structure shown, the time at which the generator is used with respect to the dispensing through the nozzle is merely intended use, and therefore is given no patentable weight. As to claims 9 and 12, see actuating button 6. As to claim 11, Hirdes inherently shows a dental handpiece because it is a dental instrument to be hand held. It is noted that the present disclosure is silent on the definition of the term "handpiece".

Claims 5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hirdes (4768955) in view of Nielsen (3890713). Hirdes shows the structure as described above, however, does not show an exchangeable supply container. Nielsen shows an exchangeable supply container and nozzle, see Figs. 7-9. It would be obvious to one of ordinary skill in the art to modify Hirdes to include an exchangeable container as shown by Nielsen in order to more conveniently refill the handpiece. As to claim 8, Hirdes does not show the use of a

pneumatically excited oscillator. Nielsen shows creating vibrations with a pneumatic oscillator, column 2, lines 62-64. It would be obvious to one of ordinary skill in the art to modify Hirdes to include the use of a pneumatic oscillator as shown by Nielsen in order to make use of art known equivalent ways of producing vibrations. It is also noted that there is no disclosed criticality to the type of oscillator used.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hirdes (4768955) in view of Werly (5007837). Hirdes shows the structure as described above, however, does not show the use of a piezoelectric oscillator. Werly shows creating vibrations with a piezoelectric oscillator 41. It would be obvious to one of ordinary skill in the art to modify Hirdes to include the use of a piezoelectric oscillator as shown by Werly in order to make use of art known equivalent ways of producing vibrations. It is also noted that there is no disclosed criticality to the type of oscillator used.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hirdes (4768955) in view of Balamuth et al (3809977). Hirdes shows the structure as described above, however, does not show the use of a magetostriptive oscillator. Balamuth shows creating vibrations with a magetostriptive oscillator, column 7, lines 28-34. It would be obvious to one of ordinary skill in the art to modify Hirdes to include the use of a magetostriptive oscillator as shown by Balamuth in order to make use of art known equivalent ways of producing vibrations. It is also noted that there is no disclosed criticality to the type of oscillator used.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hirdes (4768955) in view of Fishburne, Jr. (5839895). Hirdes shows the structure as described above, however, does not show the use of a spray gun. Fishburne teaches that the structure produces a spray, column 5, lines 1-5. It would be obvious to one of ordinary skill in the art to modify Hirdes to include producing a spay as shown by Fishburne in order to make use of known properties of art known delivery devices. It is further noted that the present disclosure does not specify any specific type of spray gun, therefore, to call the above combination a spray gun is an obvious matter of choice to the skilled artisan.

Claims 5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (3792530) in view of Nielsen (3890713). Smith shows the structure as described above, however, does not show an exchangeable supply container. Nielsen shows an exchangeable supply container and nozzle, see Figs. 7-9. It would be obvious to one of ordinary skill in the art to modify Smith to include an exchangeable container as shown by Nielsen in order to more conveniently refill the handpiece. As to claim 8, Smith does not show the use of a pneumatically excited oscillator. Nielsen shows creating vibrations with a pneumatic oscillator, column 2, lines 62-64. It would be obvious to one of ordinary skill in the art to modify Smith to include the use of a pneumatic oscillator as shown by Nielsen in order to make use of art known equivalent ways of producing vibrations. It is also noted that there is no disclosed criticality to the type of oscillator used.

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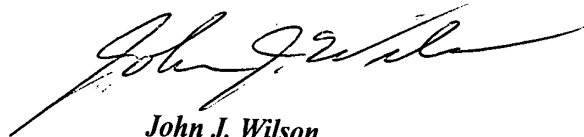
specific type of spray gun, therefore, to call the above combination a spray gun is an obvious matter of choice to the skilled artisan.

*Allowable Subject Matter*

Claims 14-16 are allowed.

*Conclusion*

Any inquiry concerning this communication should be directed to John Wilson at telephone number (703) 308-2699.



**John J. Wilson**  
**Primary Examiner**  
**Art Unit 3732**

jjw

September 24, 2004

Fax (703) 872-9306

Work Schedule: Monday through Friday, Flex Time